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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Tyler Harris,

Plaintiff,

v.

Michael Simon,

Defendant.

Case No. 2:24-cv-01611-APG-BNW

**ORDER and REPORT AND
RECOMMENDATION**

Pro se plaintiff Tyler Harris initiated this lawsuit on August 30, 2024, by filing an application to proceed *in forma pauperis* and a complaint. ECF No. 1. Plaintiff submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees or costs or give security for them. Accordingly, the court will grant his request to proceed *in forma pauperis*. The court now screens his complaint.

I. ANALYSIS

A. Screening standard

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of

1 his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.
2 2014) (quoting *Iqbal*, 556 U.S. at 678).

3 In considering whether the complaint is sufficient to state a claim, all allegations of
4 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylor*
5 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).
6 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
7 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.
8 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*
9 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se
10 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s
11 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Furthermore, this Court has jurisdiction only over specific types of cases: “Federal district
13 courts are courts of limited jurisdiction, possessing only that power authorized by Constitution
14 and statute.” *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir. 2011)
15 (quotation omitted). First, federal district courts “have original jurisdiction of all civil actions
16 arising under the Constitution, laws, or treaties of the United States,” otherwise known as federal
17 question jurisdiction. 28 U.S.C. § 1331. Federal district courts also have original jurisdiction over
18 civil actions in diversity cases “where the matter in controversy exceeds the sum or value of
19 \$75,000” and where the matter is between “citizens of different States.” 28 U.S.C. § 1332(a).

20 **B. Screening the complaint**

21 Plaintiff alleges what is essentially a breach of contract claim against Defendant, stating
22 that he agreed with Defendant to pay him one-hundred dollars for a morning of work, but that
23 Defendant did not show up when the morning came. *See* ECF No. 10. On its own, breach of
24 contract is not a federal cause of action. *See Gully v. First Nat’l Bank*, 299 U.S. 109, 114 (1936)
25 (explaining that a contract that is “valid and enforceable without reference to a federal law” does
26 not implicate any federal question and therefore does not satisfy federal question jurisdiction); *see*
27 *also American Express Nat’l Bank v. Goldsmith*, No. 2:24-cv-01464, 2024 WL 3913061, at *2
28 (D. Nev. Aug. 22, 2024) (stating that a complaint alleging breach of contract but no separate

1 federal claim will not satisfy federal-question jurisdiction). Therefore, federal-question
2 jurisdiction is not satisfied. The Court must now assess whether Plaintiff has satisfied diversity
3 jurisdiction.

4 Plaintiff alleges that the amount in controversy for this lawsuit is \$200,000. *See* ECF No.
5 1-1. However, the facts which Plaintiff provided do not suggest that the damages resulting from
6 Defendant's actions approach that amount. Nor do the facts suggest that the amount in
7 controversy exceeds the \$75,000 minimum that would give this court jurisdiction over the matter.
8 Plaintiff breaks down the amount in controversy as follows: \$1,000 for "bus, uber, gym costs,
9 nails, eyebrows," \$4,500 for "Directory of Photography work," and \$194,500 for punitive
10 damages. *See* ECF No. 1-1. While it is not the purpose of a screening order to assess the merits of
11 a claim for punitive damages, it is relevant to this order's analysis of diversity jurisdiction that a
12 party in Nevada may not recover punitive damages resulting from a breach of contract. *S.J.*
13 *Amoroso Const. Co. v. Lazovich and Lazovich*, 810 P.2d 775 (Nev. 1991). As such, the amount
14 Plaintiff lists for punitive damages does not factor into the calculation to determine the amount in
15 controversy.

16 Based on the facts in the complaint, there is no way to reasonably construe an amount in
17 controversy that exceeds the \$75,000 threshold. Indeed, considering that the agreed-upon amount
18 for the Defendant's scheduled day of work was one-hundred dollars, and that the costs to prepare
19 for the shoot totaled \$5,500, the facts suggest that the true amount in controversy is far below the
20 necessary threshold. While Plaintiff states that Defendant's failure to show up for their scheduled
21 shoot led to several months' worth of lost profits, nothing further is provided to support this
22 allegation. Thus, even though the two parties are from different states, diversity jurisdiction is not
23 satisfied because the amount-in-controversy requirement of 28 U.S.C. § 1332(a) is not satisfied.
24 As a result, the Court will recommend that this matter be dismissed without leave to amend. This
25 recommendation does not preclude Plaintiff from filing this cause of action in state court.

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1 **II. CONCLUSION**

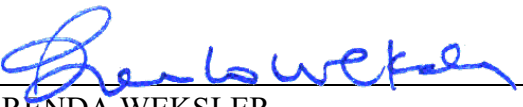
2 **IT IS THEREFORE ORDERED** that Plaintiff's application for leave to proceed *in*
3 *forma pauperis* (ECF No. 1-1) is **GRANTED**.

4 **IT IS FURTHER RECOMMENDED** that Plaintiff's complaint be dismissed without
5 leave to amend.

6
7 **NOTICE**

8 This report and recommendation is submitted to the United States district judge assigned
9 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
10 may file a written objection supported by points and authorities within fourteen days of being
11 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
12 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153,
13 1157 (9th Cir. 1991).

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15 DATED: October 24, 2024

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18 BRENDA WEKSLER
19 UNITED STATES MAGISTRATE JUDGE
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